IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.529 OF 2005

IN

A.O.NO.471 OF 2004

Xicon International Ltd. .. Applicant

vs.

Noble Electric Co. & Ors. .. Respondents

Mr.A.Y.Sakhare i/b. Dilip Taur for the Applicant

Mr. Saraf i/b. R.C.Dhuru for the Respondent No.3.

CORAM : A.S.OKA, J.

DATED : 2nd May, 2005.

P.C. :

1. Heard Counsel appearing for the Respondent No.3. The case of the Appellant is that on 6th April, 2005 the Appellant was dispossessed after order impugned was passed. The prayer (a) in this application is for restoration of possession. The said prayer cannot be granted unless the appeal heard finally. Shri Saraf submitted that apart from the fact that an appeal is preferred against the order refusing to grant ad-interim relief, the jurisdiction of the Civil Court is clearly ousted by virtue of provisions of the statute. He further

submits that the applicant is not entitled to any relief.

2. The Notice of Motion is still pending. If the issue of jurisdiction is raised by the Defendants in the suit, the learned trial Judge is bound to frame preliminary issue of jurisdiction and decide the same.

3. In this case issue of jurisdiction is already raised by the Respondent No.3 and therefore the learned trial Judge will have to frame issue of jurisdiction under Section 9A of the Code of Civil Procedure, 1908. Till the time the issue of jurisdiction is decided and for a reasonable period thereafter the parties will have to maintain status quo as of today.

4. Hence application is disposed of by passing the following order:

i) Prayer (a) of the Civil Application is rejected.

ii) The learned trial Judge will frame preliminary issue of jurisdiction as

required by Section 9(A) of the Code of Civil Procedure, 1908 and will decide the said issue as expeditiously as possible and in any event on or before 30.6.2005.

iii) Till 15.7.2005 the parties will maintain status quo as of today.

iv) If the learned Judge holds that the Court has jurisdiction, the learned Judge will proceed to decide the pending Notice of Motion as expeditiously as possible.

v) If the issue of jurisdiction is decided against the Appellant, it is always open for the Appellant to take out appropriate proceeding.

vi) Civil Application is disposed of with no order as to costs.

. Parties and the concerned Court to act on the authenticated copy of this order.

(A.S.Oka, J.)